

89-1755

Supreme Court, U.S.

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JOSEPH F. SPANOL, JR.  
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No. A-573  
IN THE SUPREME COURT OF THE  
UNITED STATES

October Term, 1989

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RAYMOND DOBARD,  
Petitioner, Appellant, Plaintiff  
vs.  
CITY OF OAKLAND, et al.,  
Respondent, Appellee, Defendant

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PETITIONER'S REPLY BRIEF ADDRESSING  
RESPONDENT'S MEMORANDUM IN OPPOSITION  
TO PETITION FOR WRIT OF CERTIORARI  
TO THE U.S. COURT OF APPEALS FOR  
THE NINTH CIRCUIT

Raymond Dobard  
Petitioner in Pro Per  
1866 Alcatraz Ave.  
Berkeley, CA 94703  
415/658-5344 (Deafness)

April 30, 1990  
Corrected May 7, 1990

**BEST AVAILABLE COPY**



To: The Justices of the Supreme Court of the  
United States

October Term, 1989

Petitioner's Reply Brief addressing Respondent's Memorandum in Opposition to Petition  
For Writ of Certiorari to the United States  
Court of Appeals for the Ninth Circuit  
(Rule 22(.5))

PETITIONER'S REPLY TO RESPONDENT'S OPPOSITION

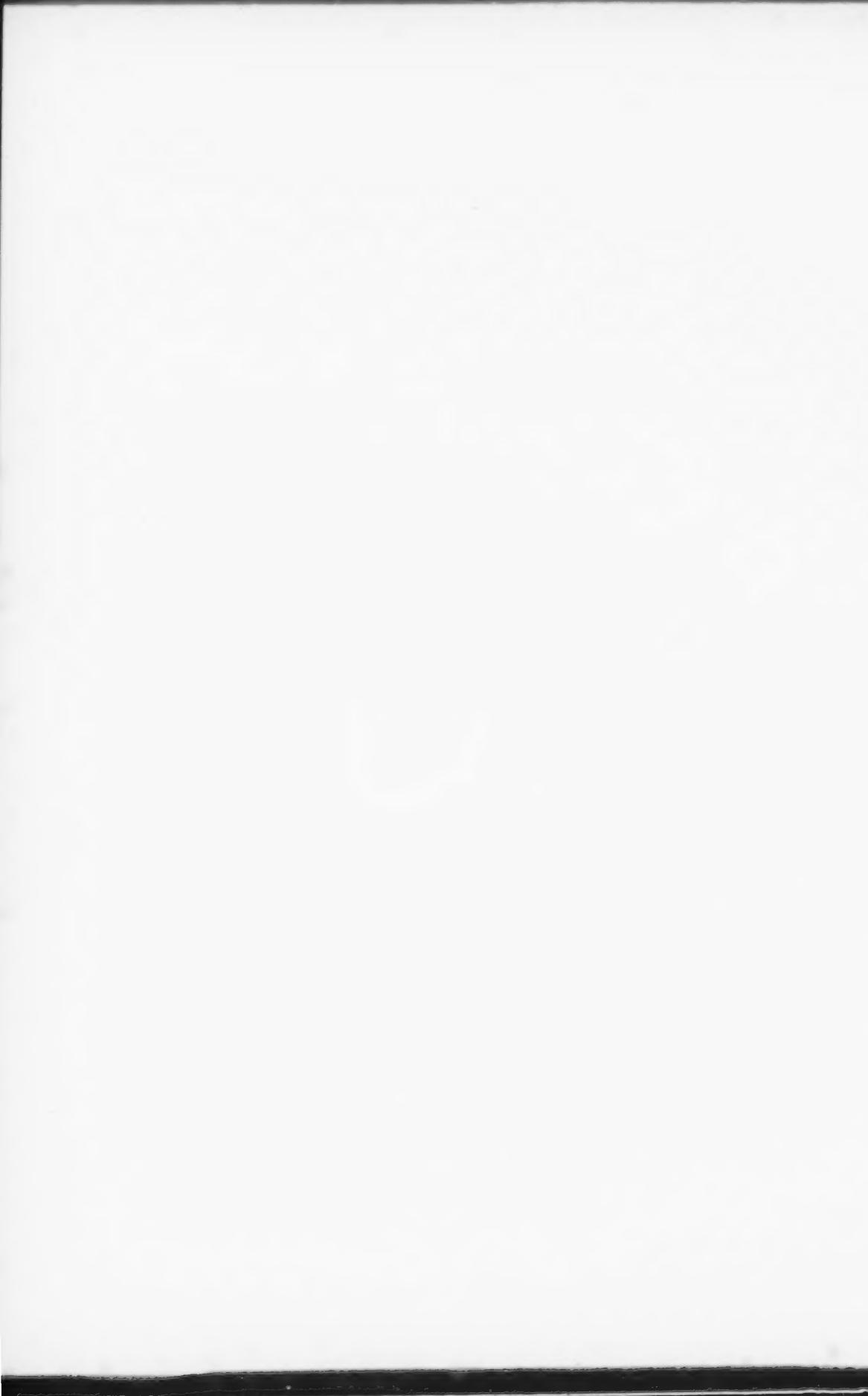
Petitioner requests this Honorable Court to grant its order for review of the decision of the Federal Court of Appeals below for the Ninth Circuit, based on the merits herein and respondent's failure to adequately address or reasonably oppose the primary and basic fundamental statement of the federal questions set forth in the petition for Writ of Certiorari for review and consideration.

The federal questions herein are relative to the Court of Appeals for the Ninth Circuit deciding a federal questions regarding the Federal Declaratory Judgment Act, 28 U.S.C. Section 2201, in conflict of departing from



the accepted and usual course of judicial proceedings in cases of "actual controversy" within its jurisdiction for declaring rights and other legal relations of this petitioner seeking such declaration on the "Justiciable Question" of whether or not petitioner's his subject properties contained a public nuisance and sources of danger; or so far sanctioned such departure by the lower Federal District Court, as to call for an exercise of this Supreme Court's power of supervision.

Respondents are elusively avoiding taking any opposition or facing-up to the real and primary issue in this review relative to the "Justiciable Controversy" of the disputed question of public nuisance issue as clearly expressed in the petition for Writ of Certiorari. Respondent's avoiding taking reasonable opposition to the primary issue in review regarding the Federal Declaratory Judgment Act should be treated by this Court as a failure of respondents to reasonably oppose the petition for Writ of Certiorari, thus empowering this



Honorable Supreme Court to grant and issue its order to review the decision below. This granting of the court's review order would be grounded on Supreme Court Rule 21(a) that provide: "Only the questions set forth in the petition or fairly included therein will be considered by the court".

COLLATERAL ESTOPPEL IS NOT APPLICABLE TO THIS PETITION FOR WRIT OF CERTIORARI

Petition<sup>er</sup> was prejudicially deprived of a fair trial by the Federal District Court below that was affirmed by the Court of Appeals that prevented petitioner from having a full and fair opportunity to litigate all of his rights or defenses relative to a final and conclusive determination on the actual controversy of the disputed question of public nuisance, which in fact there were no public nuisance.

By extrinsic acts of respondents, petitioner was prejudicially deprived of a judicial inquiry on the Justiciable Controversy of the disputed question of public nuisance. Peti-



tioner was entitled to a hearing in both law-suits at some stage of the proceedings in Civil Actions C84-1353 WWS, relative to the invasion of rights for the Myrtle Street Properties and the related case order for civil action C85-1359 WWS, relative to the unconstitutional destruction of the valuable remedially-abated B Street Properties.

There were no judicial determinations and hearings made by the lower court in civil action C84-1353 WWS or C85-1359 JPV, with findings of the existence of a "public nuisance" that would endanger the health and welfare of the community within the buildings of the subject Myrtle or B Street properties; at the time that the two lawsuits were being brought or any time thereafter; nor any findings as to whether the alleged public nuisance could be abated without the removal of the subject buildings; nor any findings or judicial determination made as to whether the "ex parte" findings of respondent's board as to the fact of a public nuisance is in any way



binding upon petitioner who owns the subject Myrtle and B Street properties, and claim they are not a public nuisance.

For all the foregoing reasons petitioner did not have a full and fair opportunity to litigate the "actual controversy" of the disputed question of public nuisance at the first trial in civil action C85-1359 JPV, nor the second trial C84-1353 WWS. At the date of filing the complaints below there were no public nuisance contained in petitioner's B and Myrtle Street Buildings, and thus collateral Estoppel is not available to respondents nor applicable to petitioner's claim, nor preclude said claim from being pursued.

PETITIONER'S REPLY TO RESPONDENT'S CONTENTIONS  
THAT PETITIONER'S CLAIMS HAVE ALREADY BEEN  
DECIDED

Petitioner's claims relative to the issue of the Justiciable Controversy of the federal question relative to the Federal Declaratory Judgment Act of the disputed question of public



nuisance has never been decided nor judicially determined.

Petitioner states that the court of appeals for Ninth Circuit, actions numbers 88-15272 (DC #84-1353 WWS) and its related case order of no. 85-2715 (DC # 85-1359 WWS) were joined together for review by the court of appeals for determination on appeal based upon the fact of the District Court invoking collateral estoppel primarily as its sole source of findings, determination and judgment in both causes of actions. Request judicial notice to pp. 6, 8, and 10 of petition, dated April 6, 1990. Judge Schwarzer of the District Court prevented a finding and determination on the justiciable controversy by invoking collateral estoppel as his sole source of judicial determination for his ruling.

Petitioner's application for petition of writ of certiorari was timely filed pursuant to 28 U.S.C. 1254(1) and said claims are ripe for review by this Supreme Court. Moreover, claims can be reopened by this court and this Honorable Supreme Court held in Gondeck v. Pan Am World Airways, 382 U.S. 25, 86 S.Ct. 153, that the interest in finality of litigation, as expressed in Supreme Court Rule 58(4), under which consecutive petitions for rehearings, and petitions for a rehearing that are out of time, will not be received, must yield where the interest of justice would make unfair the strict application of that rule.



This principle was also upheld by this court in Cahill v. New York 351 U.S. 183, 76 S.Ct. 758.

PETITIONER'S REPLY TO RESPONDENT'S MOTION AND REQUEST FOR ATTORNEYS FEES.

Petitioner opposes respondent's motion and request for attorney's fees because this motion was previously made and denied in the Federal District Court on November 8, 1988 and affirmed by the Court of Appeal, and thus the doctrine of collateral estoppel precludes such motion. Moreover, no attorney's fees are allowed in Civil Rights cases under the Christiansburg guidelines. Munson v. Frisbe, C.A. Wis. 1985, 754 F.2d 683.

Based on the above and foregoing, and in the interest of maintaining petitioner's rental income small business self-employment, petitioner requests this Honorable Court to,

(i) grant an order to review the decision of the court below; (ii) to cast respondents with all costs of this petition for writ of certiorari; (iii) allow petitioner to remain in



the apartment rental business and not on public welfare due to his 70 years of age, by issuing a restraining order enforcing respondents from the arbitrary destruction of petitioner's remaining subject seven apartment rental units at 2941 and 2941½ Myrtle Street in the City of Oakland, California, with are vitally needed for low income and homeless residents of Oakland.

Dated: April 30, 1990

Respectfully submitted,

  
Raymond Dobard, Petitioner,  
Appellant, Plaintiff in  
pro persona